

PRIVY COUNCIL

Jnanendra Mohan Bhaduri

Vs.

Rabindra Nath Chakravarty

P.C.A.No.106 of 1931

(Lord Wright, Sir George Lowndes and Sir Dinshah Mulla JJ.)

19.12.1932

JUDGMENT

SIR DINSHAH MULLA J.

1. This is an appeal from an order of the High Court of Judicature at Fort William in Bengal, dated 11th December 1930, which set aside an order of the Third Subordinate Judge of Hooghly dated 29th June 1929, and directed that an application for execution of a decree presented by the respondent to the Court of the Subordinate Judge be entertained as an application for execution of an award. The appellants are two of the executors of the will of Rajendra Lal Goswami, who died on 21st August 1917. The testator's widow, Annapurna Debi (since deceased) was also an executrix of the will. The will is dated 18th November 1916, and it was admitted to probate on 19th December 1917. The appellants are residuary legatees under the will. The respondent, the testator's widow, and Radhika Lal Goswami are beneficiaries under the will. Disputes arose as to the construction of the will, and by an agreement in writing, dated 22nd December 1917, the matters in difference were referred to the sole arbitration of Byomkesh Chakravarty. The respondent was then a minor, and was represented by his father and natural guardian, Bhawani Charan Chakravarty.

2. The arbitrator made his award on 29th July 1918. The terms of the award more particularly affecting the respondent are contained in Clauses 6 and 10. By Clause 6 it was declared that the gift to the respondent of the properties mentioned in Schedule Ga to the will was good subject to a charge for the payment of Rs. 13,063-12-0, and the executors were directed to make over the properties and all documents relating thereto, together with all accounts from the date of the death of the testator, to the respondent's father or such other person as may be appointed guardian of his person

and property. By the same clause, it was declared that the respondent was entitled to a life policy mentioned in para. 13 of the will. By Clause 10 the executors were directed to make up an account of all sums received and spent by them, and to hand over the balance to such persons as were declared entitled thereto.

3. On 1st August 1918 the arbitrator filed his award in the High Court at Calcutta. The first appellant filed objections to the award, but the parties eventually came to terms, and the award was modified by two agreements. The only modification which might possibly have affected the respondent was that Contained in Clause 5 of the first agreement, by which it was provided that the properties should be handed over to the respondent's father on his giving security for Rs. 12,000 to the satisfaction of the Registrar of the High Court, but this was not carried into effect. The first appellant afterwards applied for a decree to the High Court at Calcutta, and on 14th February 1919 a decree was passed by consent of parties by which it was directed that

"the said award as modified by the said terms of settlement ought to be carried into effect, and the same is ordered and decreed accordingly."

4. Copies of the award and of the agreements were annexed to the decree. The decree was headed

"in the matter of an Arbitration and in the matter of the estate of Babu Rajendra Lal Goswami."

5. No steps were taken by the respondent's father or any other person on his behalf during his minority in the matter either of the award or decree. The respondent attained majority in November 1925, and in July 1926, he took out a notice of motion headed in the same way as the decree. The notice is not printed in the record, and their Lordships do not know the precise terms thereof. It came up for hearing before Greaves, J., and the learned Judge, it would appear, made an order in terms of the notice. The order however was set aside on appeal on the ground that the reliefs claimed were such as could not be granted on a notice of motion made under the Indian Arbitration Act.

6. In 1927, the testator's widow applied for execution of the decree of 14th February 1919, against the appellants. The Subordinate Judge granted execution, and his order was confirmed on appeal by the District Judge. The appellants appealed to the High Court. The High Court held that the decree was a nullity, but that the application might be regarded as one for execution of the award, and passed orders accordingly.

7. On 15th February 1928 the High Court, on the application of the respondent,

transmitted the decree of 14th February 1919, for execution to the District Judge of Hooghly. On 22nd February 1928, the respondent made the present application to the trial Subordinate Judge of Hooghly for execution of the decree against the appellants. The application was in the form prescribed by Order 21, Rule 11, Civil Procedure Code. In Clause 10, which relates, to "the mode of assistance sought for from the Court," it was stated :

"It is prayed that possession may be delivered to the decree-holder of the properties mentioned in the schedule below according to the terms of the award, and orders may be passed," etc. On 7th June 1928 the appellants filed objections to the application.

8. The Subordinate Judge passed an order on 29th June 1929 dismissing the application on the preliminary ground that the decree was a nullity, as the Court which passed it had no jurisdiction, and it could not therefore be executed. The respondent appealed to the High Court at Calcutta. The learned Judges of the High Court agreed with the Subordinate Judge in holding that the decree was a nullity, but held that the application might be treated as one for execution of the award, and directed that it should be entertained as such. It is from that order of the High Court that the present appeal has been brought to His Majesty "in Council.

9. The powers of a Court in proceedings under the Indian Arbitration Act, are defined by the Act. section 11 provides for the filing of an award by the arbitrators in Court, section 13 for remitting it to the reconsideration of the arbitrators and Section 14 for Setting it aside. By Section 15 it is enacted that :

"an award on a submission on being filed in the Court in accordance with the foregoing provisions shall (unless the Court remits it to the reconsideration of the arbitrators or umpire or sets it aside) be enforceable as if it were a decree of the Court."

10. No order was made in the present case for remitting the award to the reconsideration of the arbitrator, nor was the award set aside. The award therefore remained filed in Court, and it was enforceable as if it were a decree of the Court.

11. The Act does not contain any provision for making a decree on an award such as is contained in Schedule 2, para. 21, of the Code of Civil Procedure. Such a decree, if made, is one without jurisdiction, and therefore a nullity. Their Lordships agree with the view taken by the Courts in India that the decree of 14th February 1919, was passed without jurisdiction, and was therefore incapable of execution as such.

12. The respondent however as a party to the arbitration would be entitled under the Act to enforce the arbitrator's award through the Court in exactly the same way as if it was a decree. If therefore there was an existing award in favour of the respondent, the objection to his application was one of form only and not of substance, and their Lordships think that it would be in the discretion of the High Court to treat it in the way they did.

13. The appellants contend that the award as an award had ceased to exist by reason of the variation of its terms to which some of the parties had agreed. But there was, in fact, no variation of the rights of the respondent, nor can he as a minor be regarded as consenting to the variations with which he was not concerned. There was therefore no reason why he should not enforce the award so far as it gave him rights against the appellants.

14. On the whole, their Lordships are of opinion that the appeal fails, and ought to be dismissed, and they will humbly advise His Majesty accordingly. The appellants must pay the respondent's costs of the appeal.

Appeal dismissed.